

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY DICKSON,	§
	§ No. 480, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 0806027167
	§ 0808020674
Plaintiff Below-	§
Appellee.	§

Submitted: January 29, 2010
Decided: February 16, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 16th day of February 2010, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On February 19, 2009, the defendant-appellant, Gregory Dickson, pleaded guilty to Rape in the Second Degree. On August 10, 2009, Dickson was sentenced as a habitual offender to forty years incarceration at Level V. On November 23, 2009, his motion to withdraw his guilty plea was denied. This is Dickson's direct appeal.

(2) Dickson's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the

consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(3) Dickson's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Dickson's counsel informed Dickson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Dickson also was informed of his right to supplement his attorney's presentation. Dickson responded with a brief that raises several issues for this Court's consideration. The State has responded to the position taken by Dickson's counsel as well as the issues raised by Dickson and has moved to affirm the Superior Court's judgment.

(4) Dickson raises several issues for this Court's consideration, which may fairly be summarized as follows: the Superior Court abused its

¹ *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

discretion by not granting his motion to withdraw his guilty plea because a) he did not enter his plea knowingly and voluntarily and b) the plea hearing was procedurally deficient because the judge did not address him in open court and did not make sure he understood the substance of the plea.²

(5) The transcript of the plea colloquy reflects that Dickson's attorney told the judge that he and Dickson had reviewed the elements of the charge of Rape in the Second Degree, that Dickson understood he was eligible to be sentenced as a habitual offender, and that he understood he could be sentenced to as much as life in prison. Dickson confirmed that everything his attorney had told the judge was correct. Dickson further stated that he had reviewed, understood and signed both the Plea Agreement form and the Truth-in-Sentencing Guilty Plea form. He stated that no one had forced him into pleading guilty and that no one had promised him anything not contained in the plea agreement. He stated that he understood he was giving up his right to a trial. Finally, Dickson stated that he understood that the minimum sentence he could receive was twenty-five years and the maximum sentence was life imprisonment.

² To the extent Dickson argues that his attorney's performance was deficient, we decline to address that claim for the first time in this direct appeal. *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

(6) Dickson claims that the judge should have permitted him to withdraw his guilty plea because his plea was not voluntary and the plea hearing was procedurally deficient. The transcript of the plea colloquy clearly reflects that Dickson's plea was knowing and voluntary. In the absence of clear and convincing evidence to the contrary, Dickson is bound by the answers he provided on his TIS guilty plea form and during his plea colloquy.³ Moreover, the transcript of the plea colloquy reflects that the judge addressed Dickson and adequately explained to him the consequences of his guilty plea. As such, the plea hearing was not procedurally deficient.⁴ Because there is no factual support for Dickson's claims, we conclude that they are without merit.

(7) This Court has reviewed the record carefully and has concluded that Dickson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Dickson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Dickson could not raise a meritorious claim in this appeal.

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ Super. Ct. Crim. R. 11.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland
Justice